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MONTANA LEGISLATIVE HISTORY

Chapter 431 19 91

Bill H _____ S 253 Original bill & history ____C

H. Committee on Natural Resources		S. Committee on Natural Resources	
Hearing Date(s) Mar 21	✓ C	Hearing Date(s) Feb 13	✓ C
Apr 02	✓ C	_____	____C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out Apr 02	✓ C		

Note: No minutes were forms regarding Senate action

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

2/02	FISCAL NOTE REQUESTED		
2/05	FISCAL NOTE RECEIVED		
2/06	FISCAL NOTE PRINTED		
2/12	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	44	5
2/19	3RD READING PASSED	48	2
	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO FISH & GAME		
3/11	HEARING		
3/15	COMMITTEE REPORT—BILL CONCURRED		
3/19	2ND READING CONCURRED	89	8
3/20	3RD READING CONCURRED	88	12
3/27	SIGNED BY PRESIDENT		
3/27	SIGNED BY SPEAKER		
3/28	TRANSMITTED TO GOVERNOR		
4/02	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 319	EFFECTIVE DATE: 4/02/91	

SB 253 INTRODUCED BY BENGTSON
REVISE THE OPENCUT MINING ACT
BY REQUEST OF DEPARTMENT OF STATE LANDS

2/01	INTRODUCED		
2/01	REFERRED TO NATURAL RESOURCES		
2/02	FIRST READING		
2/02	FISCAL NOTE REQUESTED		
2/05	FISCAL NOTE RECEIVED		
2/07	FISCAL NOTE PRINTED		
2/13	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	FISCAL NOTE RECEIVED		
2/19	FISCAL NOTE PRINTED		
2/19	2ND READING PASSED	50	0
2/20	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO NATURAL RESOURCES		
3/21	HEARING		
4/02	COMMITTEE REPORT—BILL CONCURRED		
4/06	2ND READING CONCURRED	90	0
4/06	ON MOTION RULES SUSPENDED TO PLACE ON 3RD READING THIS DAY		
4/06	3RD READING CONCURRED	94	3
	RETURNED TO SENATE		
4/11	SIGNED BY PRESIDENT		
4/12	SIGNED BY SPEAKER		
4/12	TRANSMITTED TO GOVERNOR		
4/16	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 431	EFFECTIVE DATE: 10/01/91	

SB 254 INTRODUCED BY KEATING
AUTHORIZE ACCREDITED HEALTH CARE FACILITY TO BE ELIGIBLE FOR LICENSURE

2/01	FISCAL NOTE REQUESTED
2/01	INTRODUCED
2/01	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY
2/02	FIRST READING
2/05	FISCAL NOTE RECEIVED
2/06	FISCAL NOTE PRINTED
2/08	HEARING
2/09	COMMITTEE REPORT—BILL PASSED

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0253, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill: 1) prohibits mining of previously reclaimed land without an opencut contract; 2) establishes an annual opencut mining fee of $50 for each mine site under contract; 3) increases the opencut mining contract application fee from $50 to $100; 4) authorizes the Department of State Lands to spend money for reclamation of land and rehabilitation of water affected by opencut mining; 5) authorizes acceptance of letters of credit as bond; and 6) provides administrative procedures for and appeals of assessment of civil penalties.

ASSUMPTIONS:

1. There will be 15 new opencut mining contracts in the 1993 biennium.
2. The 852 opencut mines will pay the $50 annual mining fee.
3. Currently, the opencut mining application fees are deposited to the general fund. This bill redirects the application fees to the opencut mining and reclamation state special revenue account.

FISCAL IMPACT:

Department of State Lands:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Revenues:						
Application Fees	750	1,500	750	750	1,500	750
Annual Mining Fees	0	42,600	42,600	0	42,600	42,600
Total	750	44,100	43,350	750	44,100	43,350
DIstribution of Revenues						
General Fund	750	0	750	750	0	750
Open Cut Mining Acct. (02)	0	44,100	44,100	0	44,100	44,100
Total	750	44,100	43,350	750	44,100	43,350

Rod Sundsted 2-5-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Esther G Bengtson 2/7/91
ESTHER G. BENGTSON, PRIMARY SPONSOR DATE

Fiscal Note for SB0253, as introduced SB 253

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0253, second reading

DESCRIPTION OF PROPOSED LEGISLATION:

This bill: 1) prohibits mining of previously reclaimed land without an opencut contract; 2) authorizes the Department of State Lands to spend money for reclamation of land and rehabilitation of water affected by opencut mining; 3) authorizes acceptance of letters of credit as bond; and 4) provides administrative procedures for and appeals of assessment of civil penalties.

ASSUMPTIONS:

1. There will continue to be 250 new opencut applications each year @ $50 per application fee plus fines and penalties of $3,000 per year.
2. Revenues will be deposited in the opencut state special revenue account and used to supplement inadequate reclamation bond forfeitures for sediment control, noxious weed control, and small reclamation research plots on difficult reclamation sites.
3. Currently, application fees, fines and penalties are deposited into the general fund. This bill deposits the funds to an open cut state special revenue account.
4. There are no changes to program expenditures.

FISCAL IMPACT:

Department of State Lands:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Revenues:						
Application Fees	12,500	12,500	0	12,500	12,500	0
Fines and penalties	3,000	3,000	0	3,000	3,000	0
Total	15,500	15,500	0	15,500	15,500	0
Distribution of Revenues:						
General Fund	15,500	0	(15,500)	15,500	0	(15,500)
Open Cut Mining Acct. (02)	0	15,500	15,500	0	15,500	15,500
Total	15,500	15,500	0	15,500	15,500	0

Rod Sundsted 2-18-91

ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Esther G. Bengtson 2/19/91

ESTHER G. BENGTSON, PRIMARY SPONSOR DATE

Fiscal Note for SB0253, second reading

SB 253

encompassed by federally reserved water rights. In 1985, an agreement was reached that allowed the Assiniboine and Sioux Tribes of the Fort Peck Reservation to market water from their federally reserved water rights, Mazurek said. SJR 10 is a reminder to Congress that in 1985 a contract was made with these tribes and that Congress needs to pass legislation to grant authority to them over their water rights, Mazurek concluded.

Proponents' Testimony:

Lawrence D. Wetsit, Chairman of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, appeared in support of SJR 10. (EXHIBIT #1).

Opponents' Testimony:

There were no opponents to SJR 10.

Questions From Committee Members:

There were no questions from committee members.

Closing by Sponsor:

Senator Mazurek stated that he felt Lawrence Wetsit did a "very good job" of outlining the conditions and limitations of the Compact and asked the committee for a DO PASS of the resolution.

HEARING ON SB 253

Presentation and Opening Statement by Sponsor:

Senator Bengtson, District 49, told the committee she had been asked to carry this revision of the Opencut Mining Act because some of her constituents had concerns.

Proponents' Testimony:

Steve Welch, Department of State Lands, testified in support of SB 253. (EXHIBIT #1).

Opponents' Testimony:

There were no opponents to SB 253.

Questions From Committee Members:

Chairman Stimatz asked Steve Welch why the Department of State Lands (DSL) wanted this bill. Welch stated there was a significant need to supplement bonds that had been forfeited because they had been written a number of years ago and were now inadequate.

Closing by Sponsor:

Senator Bengtson closed the hearing on SB 253.

HEARING ON SB 283

Presentation and Opening Statement by Sponsor:

Senator Doherty, District 20, told the committee that SB 283 was presented on behalf of Department of State Lands and is a preventive medicine bill. The bill reduces the opportunity for "legal mischief," Doherty added.

Proponents' Testimony:

John North, Department of State Lands, told the committee that SB 283 addresses the consequences of violating metal mining permits. North said that it is assumed, under current laws, that permits are enforceable because a permit is required but there is nowhere in the statute that states there is a penalty for violating a permit, North stated. (EXHIBIT #1).

Dennis Olson, Northern Plains Resource Council, appeared in support of SB 283.

John Fitzpatrick, Director of Community and Governmental Affairs for Pegasus Gold Corporation, stated he supported SB 283.

Opponents' Testimony:

There were no opponents to SB 283.

Questions From Committee Members:

Senator Bengtson asked if SB 283 was precipitated by a particular event? John North said he had been "worried" about these mining permits since 1977. The potential cyanide leak in central Montana gave some urgency to the drafting of this bill, North said. Overall, as mining operations continue to grow, there is an increased need for an improved legal basis, North said.

Closing by Sponsor:

Senator Doherty told the committee he felt the bill received a fair hearing and that he would continue to work closely with members of the mining industry.

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 2-13-91
BILL NO SB 253

DEPARTMENT OF STATE LANDS

TESTIMONY FOR SENATE BILL 253

(3:00 pm February 13, 1991 SENATE NATURAL RESOURCES)

This proposed legislation would provide the Department and the Opencut Operator with additional flexibility in implementing hte Montana Open Cut Mining Act in the areas of:

1. Successful reclamation after reclamation bond forfeitures;
2. Remining areas previously reclaimed;
3. Reclamation bonding; and
4. Resolution of Violations of the Open Cut Mining Act

SECTION 1

All too frequently, bonds that are forfeited for failure to reclaim an opencut mining site, are insufficient to adequately restore that affected land to a productive use. Most of the bonds that have been forfeited were written a number of years ago, and the costs that were adequate then, are now much higher. In addition, mining plans may not have been followed such that reclamation techniques must be altered to achieve the desired post-mine land use, and/or the mined area may have been expanded without authorization and bond.

Funds made available by amending the statute would allow the Department ability to contribute sufficient money to a project for a complete reclamation job.

In addition, certain operations are located in harsh environments, or create very harsh conditions that make reclamation extremely difficult. The Department would like to conduct small research projects to determine optimum species selection, and reclamation methods, on some of these sites instead of requiring the operator to gamble on specific species or methods over the entire affected area just to have them fail, and return to try again.

SECTION 2

It is not uncommon for an operator to expend considerable funds and resources to reclaim mined sites, only to discover that another party has gone back in and redisturbed the area and destroyed the reclamation just completed. Many times, this reentry into a site is done without benefit of topsoil salvage, and almost always without regrading, retopsoiling, or seeding.

The amendment proposed would ensure that mining in completed reclamation would be done in an acceptable manner such that it could again be reclaimed.

SECTION 4

Most surety companies are now unwilling to write reclamation bonds if the applicant does not currently hold a bond, or the area applied for is not being utilized in conjunction with a larger project that is also bonded. The other forms of bonding that are acceptable by statute are cash, property, and Certificates of Deposit. Too frequently, these forms are not available to an applicant either. If an applicant cannot furnish an acceptable bond, then the state is unable to enter into a Mined Land Reclamation Contract, and the site applied for cannot be mined. The Department is currently reviewing an application that is facing that very problem, and unless alternative bonding is approved, we will be required by statute to deny the application.

SECTION 5

Current sections that address penalties and enforcement for violations of the Opencut Mining Act require the Department to sue, through the Attorney General, for recovery of civil penalties, without benefit of an informal hearing, and therefore creating the potential for requiring the action to go before district court.

Changes proposed in those sections would allow an operator the opportunity for an informal hearing to discuss the violation, and if not satisfied with the results, request a formal hearing. If still not satisfied with the decision, they could request judicial review.

These changes would simplify court civil penalty procedures for both the operators and the department by limiting the court review to an administrative record.

The Department of State Lands respectfully requests your support of the proposed amendments.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRPERSON BOB RANEY**, on March 21, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Bob Raney, Chairman (D)
Mark O'Keefe, Vice-Chairman (D)
Beverly Barnhart (D)
Vivian Brooke (D)
Ben Cohen (D)
Ed Dolezal (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
David Hoffman (R)
Dick Knox (R)
Bruce Measure (D)
Tom Nelson (R)
Bob Ream (D)
Jim Southworth (D)
Howard Toole (D)
Dave Wanzenried (D)

Staff Present: Gail Kuntz, Environmental Quality Council
Paul Sihler, Environmental Quality Council
Lisa Fairman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON SB 253 — Tape 1A

Presentation and Opening Statement by Sponsor:

SEN. ESTHER BENGTSON, SD 49 - Shepherd, said she went to the Department of State Lands (DSL) on behalf of some of her constituents who were having trouble getting surety bonds for their gravel pit. DSL added language to the Open Cut Mining Act to address these bonds. SB 253 allows for a letter of credit to be used in lieu of a surety bond, provides for a reclamation account and resolution of violations of the Open Cut Mining Act, and talks about reclamation bond forfeiture.

Proponents' Testimony:

Steve Welch, DSL Open Cut Mining Bureau Chief, testified on the bill and urged support. **EXHIBIT 1**

Opponents' Testimony: None.

Questions from Committee Members:

REP. RANEY asked why a person would be unable to get any other form of bonding. **Mr. Welch** said he assumes it is a matter of capital. Most bonding companies won't write them anymore, especially for small family-owned operations. It would cost them about $9,000 per bond and they just don't have the money.

REP. RANEY asked if they would be a bad risk and how anyone would know they could get the reclamation. **Mr. Welch** said a letter of credit could be used for bond.

REP. RANEY asked if they could sell everything and walk away from the site under a letter of credit. **Mr. Welch** said he didn't think so.

Closing by Sponsor:

SEN. BENGTSON closed.

HEARING ON SB 386

Presentation and Opening Statement by Sponsor:

SEN. BENGTSON said SB 386 clarifies Montana water law. It allows a person to temporarily obtain and use another person's water right. This reduces the risk to water users from entering voluntary arrangements for short periods, such as during a drought. SB 386 came out of the drought management section of the Montana Water Plan.

Proponents' Testimony:

Gary Fritz, Water Resources Division Administrator for the Department of Natural Resources, said SB 386 is the fourth of four state water plan bills presented to the Legislature this session. The others were water storage, salvage and the drought management committee bill. This is the temporary transfer bill, which was developed by the Drought Management Steering Committee.

The bill allows an existing water-right holder to temporarily change the water's use and provide the right to someone else. An irrigator could temporarily transfer his water right to a city, if the city were having a tough time providing enough water to residents during a drought. The arrangement can continue for 10 years, with an extension of 10 more years if the party gains approval through an abbreviated change process.

EXHIBIT 1
DATE 3-21-91
SB 253

DEPARTMENT OF STATE LANDS

TESTIMONY FOR SENATE BILL 253

(3:00 pm March 21, 1991 HOUSE NATURAL RESOURCES)

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In addition, certain operations are located in harsh environments, or create very harsh conditions that make reclamation extremely difficult. The Department would like to conduct small research projects to determine optimum species selection, and reclamation methods, on some of these sites instead of requiring the operator to gamble on specific species or methods over the entire affected area just to have them fail, and return to try again.

SECTION 2

It is not uncommon for an operator to expend considerable funds and resources to reclaim mined sites, only to discover that another party has gone back in and redisturbed the area and destroyed the reclamation just completed. Many times, this reentry into a site is done without benefit of topsoil salvage, and almost always without regrading, retopsoiling, or seeding.

The amendment proposed would ensure that mining in completed reclamation would be done in an acceptable manner such that it could again be reclaimed.

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The Department of State Lands respectfully requests your support of the proposed amendments.

EXHIBIT 1
DATE 3-21-91
HB SB 253

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The Department of State Lands respectfully requests your support of the proposed amendments.

REP. COHEN said the problem with "sufficient," or creating a protest by 50 percent of the property owners, is that there are thousands of property owners, some out of state. It becomes impossible to do. Current wording in the bill should be retained.

Motion: REP. FAGG MOVED THAT SB 189 BE CONCURRED IN AS AMENDED. Motion carried 17-1, with **REP. COHEN** voting no.

EXECUTIVE ACTION ON SB 253

Motion/Vote: REP. FAGG MOVED SB 253 BE CONCURRED IN. Motion carried 17-1, with **REP. GILBERT** voting no.

EXECUTIVE ACTION ON SB 303

Motion: REP. GILBERT MOVED SB 303 BE CONCURRED IN.

Discussion: Gail Kuntz, Environmental Quality Council, said **SEN. CECIL WEEDING's** amendments address concerns of water users and agricultural groups. The amendments further define "adversely affected." **EXHIBIT 2**

CHAIRMAN RANEY said that under present law in Montana, water quality is not considered when permits are issued. It's time to address water quality. SB 303 does that.

REP. GILBERT said it would be difficult to document the 10 percent increase. He said the amendments are unnecessary.

Vote: SB 303 BE CONCURRED IN. Motion carried 14-4, with **REPS. FOSTER, KNOX, ELLISON** and **HOFFMAN** voting no.

EXECUTIVE ACTION ON SB 377

Motion/Vote: REP. BROOKE MOVED SB 377 BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON SB 386

Motion: REP. KNOX MOVED SB 386 BE CONCURRED IN.

Discussion: CHAIRMAN RANEY asked **Mr. Sihler** why there were numerous references to SB 325 when SB 386 was presented. **Mr. Sihler** said the two bills relate to water leasing. One relates to irrigators, the other to non-irrigators. SB 386 is the irrigation bill.

CHAIRMAN RANEY asked if SB 386 makes it easier for an irrigator to change a water right, and if it would be much easier under this bill than any of the other bills that changed water rights for instream flow and recharge. **Mr. Sihler** said the bill allows a temporary change in appropriation right. If water is leased to someone else, the water right holder does not lose the appropriation.

4-2-91
TDD

HOUSE STANDING COMMITTEE REPORT

April 2, 1991

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 253 (third reading copy -- blue) be concurred in .

Signed: _____
Bob Raney, Chairman

Carried by: Rep. Knox